

ELECTRONICALLY FILED Pulaski County Circuit Court Larry Crane, Circuit/County Clerk 2018-Dec-27 13:57:25 60CV-18-8248 C06D05 : 4 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

DAREL ADELSBERGER and
ANNETTE ADELSBERGER

PLAINTIFFS

v. No. 60CV-18-8248

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

ORIGINAL ANSWER

COMES NOW, Defendant, Union Pacific Railroad Company, and for its Answer to Plaintiffs' Complaint, states and alleges the following:

1. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 1 of the Complaint, and therefore denies the same.
2. Defendant admits the allegations contained in paragraph 2 of the Complaint.
3. Defendant admits the allegations contained in paragraph 3 of the Complaint.
4. Defendant admits the it uses and is responsible for maintaining certain railroad tracks and facilities in the state, including the track that passes through Section 2, Township 2 North, Range 11 West, Pulaski County, but denies the remaining allegations contained in paragraph 4 of the Complaint.
5. Defendant denies the allegations contained in paragraph 5 of the Complaint.
6. Defendant denies the allegations contained in paragraph 6 of the Complaint.
7. Defendant denies the allegations contained in paragraph 7 of the Complaint.

8. Defendant denies that it failed to properly maintain the culvert and drainage facilities. Defendant is without sufficient information to admit or deny the remaining allegations in paragraph 8 of the Complaint and therefore denies them.

9. Defendant denies the allegations contained in paragraph 9 of the Complaint.

10. All allegations contained within the WHEREFORE clause are denied.

11. All allegations not admitted herein are specifically and generally denied.

AFFIRMATIVE DEFENSES

12. Pleading affirmatively, Plaintiffs have failed to state facts upon which relief can be granted, and the Complaint should be dismissed pursuant to Rule 12(b)(6).

13. Pleading affirmatively, Plaintiffs have failed to mitigate their damages.

14. Pleading affirmatively, Plaintiffs' contributory negligence bars Plaintiffs' recovery in whole or in part.

15. Pleading affirmatively, any flooding which has occurred on Plaintiffs' property was the result of natural occurrences or circumstances outside the control of Defendant.

16. Pleading affirmatively, Union Pacific states that the causes of action alleged are preempted or precluded by Federal Law, including but not limited to the Interstate Commerce Commission Termination Act, 49 U.S.C. §10101 et. seq.

17. Pleading affirmatively, Union Pacific states that this action must be dismissed due to lack of subject matter jurisdiction.

18. Pleading affirmatively, Union Pacific states that this action must be dismissed due to laches.

19. Pleading affirmatively, Union Pacific states that this action must be dismissed due to estoppel.

20. Pleading affirmatively, Union Pacific states that this action must be dismissed due to the applicable statute of limitations.

21. Pleading affirmatively, Union Pacific states that the damages described herein were, in whole or in part, caused by the contributory negligence of the Plaintiffs or third parties over whom Union Pacific has no control.

22. Union Pacific reserves its right to further amend its answer and defenses herein based on further discovery and as justice may require. Specifically Union Pacific reserves the right to plead further and reserves objections on the basis of lack of jurisdiction over the subject matter, lack of jurisdiction over the person, failure to state facts upon which relief can be granted, pendency of another action between the same parties arising out of the same transaction or occurrence, and the affirmative defenses available under Rule 8, including but not limited to accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, payment, release, res judicata, statute of frauds, and any other matter constituting an avoidance or affirmative defense. Union Pacific reserves the right to further amend its Answer and defenses herein based on further discovery and as justice may require.

23. Pleading affirmatively, Union Pacific pleads all rights and defenses under the Civil Justice Reform Act of 2003, as applicable.

WHEREFORE, Defendant prays for an order dismissing Plaintiff's complaint, for an award of costs and attorney's fees and for all other relief to which Defendant may be entitled.

Respectfully submitted,

Joseph P. McKay, #99006
Joshua C. Ashley, #2012051
FRIDAY, ELDREDGE & CLARK, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201-3522
Telephone: (501) 376-2011
Facsimile: (501) 376-2147
Email: jmckay@fridayfirm.com
jashley@fridayfirm.com

/s/ Joseph P. McKay

Joseph P. McKay

CERTIFICATE OF SERVICE

I, Joseph P. McKay, certify that a true and correct copy of this filing has been filed with the Court's eFlex filing system, and served by electronic mail and first class U.S. mail postage prepaid on this 27th day of December, 2018 upon:

Stanley D. Rauls
P.O. Box 21665
Little Rock, AR 72221
sdr@aristotle.net

/s/ Joseph P. McKay

Joseph P. McKay